

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IPCOM GMBH & CO. KG,

Plaintiff,

vs.

APPLE INC.,

Defendant.

CASE NO. 5:14-mc-80037-EJD-PSG

STIPULATION AND [PROPOSED]
PROTECTIVE ORDER

On April 10, 2014, the Court issued its Order pursuant to 28 U.S.C. § 1782 granting ICom GmbH & Co. KG (“ICom”) leave to obtain discovery from Apple Inc. (“Apple”) for use in foreign proceedings. On April 11, 2014, ICom served Apple with a subpoena identifying the documents it seeks for use in those foreign proceedings. Apple filed a motion to quash that subpoena, but after full briefing by the parties, the Court issued an Order on July 28, 2014 denying Apple’s motion to quash and ordering Apple to produce the requested documents no later than August 27, 2014. The Court also ordered the parties to submit a proposed protective order by August 13, 2014.

Whereas, Apple wishes to protect the confidential, proprietary, and/or commercially sensitive information of certain documents sought by ICom;

1 Apple and IPCom hereby stipulate and agree as follows:

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3 The Court hereby orders that Apple may, in good faith, designate material produced in
4 response to this subpoena that is confidential, proprietary, and/or commercially sensitive
5 information marked as "CONFIDENTIAL." Once produced and so designated, or if no
6 designation is necessary, Apple may use these documents in the foreign proceedings to the same
7 extent as IPCom.

8 The following protections shall apply to information produced by Apple pursuant to the
9 subpoena at issue marked CONFIDENTIAL:

10 1. IPCom's in-house counsel and other IPCom personnel shall not be permitted access
11 to confidential information;

12 2. IPCom shall not permit access to the confidential information by anyone except:

13 (a) German court personnel;

14 (b) Qualified Retained Experts as defined below; and

15 (c) IPCom outside counsel who (1) do not have any financial interest in IPCom, (2) do not
16 represent IPCom in any licensing negotiations, (3) have agreed in writing to be bound to the terms
17 of this protective order, and (4) who need to see this Apple confidential information for purposes
18 of putting on IPCom's claims or defenses in any German litigation(s);

19 3. "Qualified Retained Experts" as used above means retained experts who are
20 qualified in advance with an opportunity for Apple to make reasonable objections within ten (10)
21 calendar days after disclosure of any such expert. If, after meeting and conferring in good faith
22 following such objection, the parties are unable to resolve the objection,

23 Apple shall have five (5) calendar days from the date of its objection in which to file a
24 motion for a protective order with this Court, after which time it shall be deemed to have waived
25 its objections. Each such qualified expert will agree in writing to be bound to the terms of this
26 protective order and will only be given access if he or she needs to see Apple's confidential
27 information for purposes of putting on IPCom's claims or defenses in any German litigation(s);
28

1 4. IPCom agrees to submit any written materials containing confidential information
2 in a redacted form if reasonably feasible or, if redaction is not feasible, after designating these
3 materials “Highly Confidential” and requesting the competent German court to exclude these
4 materials from any third party access to the court files. IPCom further agrees to stipulate and
5 move any applicable German court to close the courtroom during those portions of hearings when
6 Apple’s confidential information is to be discussed. If the German court refuses to close the
7 courtroom, IPCom may nevertheless make use of the Apple confidential information, but agrees to
8 use its best efforts to ensure that Apple’s confidential information will not be made public,
9 including, for example, referring to citations to the sealed written record and directing all
10 witnesses to refer to citations to the written record. In any situation where Apple confidential
11 information must be made public in a German court, IPCom will continue to use its best efforts to
12 minimize the Apple confidential information that would in fact be made public, both in terms of
13 quantity and the commercial sensitivity of such Apple confidential information;

14 5. After receiving notice IPCom will promptly notify Apple and its counsel of any
15 attempt by a third party to the German proceedings to access any such Apple confidential
16 information that was in fact used in those proceedings, or of any attempt by any third party to
17 intervene in the German proceedings, in sufficient time to allow Apple to object, with the
18 cooperation of the parties in the proceeding, and to have such objection timely resolved by the
19 German court to ensure adequate protections remain in place;

20 6. After and to the extent IPCom receives notice, IPCom will object to any attempt by
21 a third party to access any such Apple confidential information submitted to the court in the
22 German proceedings; and

23 7. IPCom will give Apple advance notice (at least 2 weeks where possible, and
24 promptly where IPCom has less than 2 weeks notice) of any hearings at which its confidential
25 information may be used and an opportunity to attend.
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1 DATED: August 13, 2014

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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3
4 By: /s/ Brian Cannon

Brian Cannon

5 Attorneys for IPCom

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7 DATED: August 13, 2014

WILMER CUTLER PICKERING HALE AND DORR
LLP

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9 By: /s/ Mark Selwyn

10 Mark Selwyn

11 Attorneys for Apple

12
13 PURSUANT TO STIPULATION, IT IS SO ORDERED

14
15 DATED: _____, 2014

16
17 By:

18 _____
Hon. Paul S. Grewal

19 United States Magistrate Judge